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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-827

CHARLOTTE SNOW, et al.,
Appellant,

v.

CITY OF MEMPHIS, et al.,
Appellees.

On Appeal from the Supreme Court
of the State of Tennessee

MOTION TO AFFIRM

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Pursuant to Rule 16 of the United States Supreme Court Rules, appellees respectfully move the Court to affirm the judgment of the Supreme Court of the State of Tennessee on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I

The Classification of Residential Property Containing Two or More Rental Units as "Industrial and Commercial Property" for Property Tax Purposes as Mandated by Article II, Section 28 of the Tennessee Constitution Is Well Within the Range of a State's Discretionary Power to Establish Classifications in the Laying of Taxes.

A. The State's power to establish tax classifications.

A long line of authorities provided by this Honorable Court establishes that classifications for purposes of taxation are permissible under the equal protection clause of the Fourteenth Amendment; that the states have broad power to establish tax classification schemes; and that such classification schemes must be palpably arbitrary or invidiously discriminatory resting on no reasonable consideration of difference or policy before they will be deemed to offend the equal protection clause. *E.g., Kahn v. Shevin,* 416 U.S. 351 (1974); *Lehnhausen v. Lake Shore Auto Parts Co.,* 410 U.S. 356 (1973); *Allied Stores of Ohio v. Bowers,* 358 U.S. 522 (1959); *Walters v. City of St. Louis,* 347 U.S. 231 (1954); *Welch v. Henry,* 305 U.S. 134 (1938); *State Board of Tax Comm'rs v. Jackson,* 283 U.S. 527 (1931); *Brown-Forman Co. v. Kentucky,* 217 U.S. 563 (1910).

The scope of the discretion permitted the states under the equal protection clause in establishing tax classification schemes was recently restated by Mr. Justice Douglas, speaking for a unanimous Court in *Lehnhausen v. Lake Shore Auto Parts Co., supra*:

> "The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals different from the others. The test is whether the difference in treatment is an invidious discrimination . . . Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation . . ." 410 U.S. at 359.

The breadth of the leeway allowed the states in the area of taxation is also reflected in this Court's decision in *Allied Stores of Ohio v. Bowers, supra,* wherein it was held that a state, in establishing tax classifications, "is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value." 358 U.S. at 527.

It appears well-established by these and other holdings that a tax classification, although discriminatory, is not invidious or violative of the equal protection clause if any state of facts can be conceived that would sustain the classification. *E.g., Kahn v. Shevin, supra; New York Rapid Transit Corp. v. City of New York,* 303 U.S. 573 (1938); *Carmichael v. Southern Coal & Coke Co.,* 301 U.S. 495 (1937); *Rast v. VanDeaman & Lewis,* 240 U.S. 342 (1916). Thus, in testing classifications by the standards of the Fourteenth Amendment, questions of equal protection should be decided with respect to the general scope of the classifications rather than by the chance incidence of the tax in particular instances or with respect to particular taxpayers.

B. The logic of this particular classification.

Article II, Section 28 of the Tennessee Constitution prescribes four subclassifications of real property for property tax purposes:

> (a) Public Utility Property, to be assessed at fifty-five (55%) per cent of its value:

(b) Industrial and Commercial Property, to be assessed at forty (40%) per cent of its value;

(c) Residential Property, to be assessed at twenty-five (25%) per cent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property; and

(d) Farm Property, to be assessed at twenty-five (25%) per cent of its value.

The apparent thrust of a classification which places residential property containing two or more rental units in a commercial classification is to classify as "commercial" properties which afford residential accommodations but which are inherently commercial in the broad sense. Thus, in order to provide a means of distinguishing between income-producing commercial properties affording residential accommodations on the one hand and residential property on the other, a line was drawn at two or more rental units.

The logic and reasonableness of drawing the line at two or more rental units is apparent when viewed in the context of the purpose of the classification. Residential properties which are primarily commercial in the broad sense, such as multi-unit apartment buildings and hotels, are included in a commercial classification while residential properties which are not primarily commercial in the broad sense but which may incidentally produce rental income are included in a residential classification. This classification is conceivably related to the following purposes:

(a) Encouraging individual home ownership.

(b) Shifting the property tax burden from the individual home owner and farmer to income-producing commercial, industrial and utility properties.

(c) Providing a type of homestead tax relief which would compensate for inflationary trends by adopting a lower assessment ratio rather than an exemption of a fixed dollar amount.

That a classification may not be perfect or may leave out some that might conceivably have been included does not render the classification violative of the equal protection clause. *Allied Stores of Ohio v. Bowers, supra.* See generally *Village of Belle Terre v. Boraas,* 416 U.S. 1 (1974).

II

The Classification of Residential Property Containing Two or More Rental Units as "Industrial and Commercial Property" for Property Tax Purposes Imposes No Invidiously Discriminatory Tax Burden Upon Residents of Leased or Rented Multi-Unit Residential Property.

A. **Any discrimination inherent in the classification is neither hostile nor oppressive.**

In *Lehnhausen v. Lake Shore Auto Parts Co., supra,* this Court said, quoting in part from *Madden v. Kentucky,* 309 U.S. 83 (1939):

> ". . . 'in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.' . . . there is a presumption of constitutionality which can be overcome 'only by the most explicit demonstration that a classification is hostile and oppressive discrimination, against particular persons and classes' . . . And the Court added, 'the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."
>
> 410 U.S. at 364

Appellees maintain that this language is equally applicable with respect to the power of the people to amend their state's constitution to prescribe reasonable systems of taxation.

Appellees insist that appellants have failed in their attempt to find hostile and oppressive discrimination against residents of leased or rented multi-unit residential property. In this respect appellees believe that Tennessee's classification of property is no more discriminatory against such tenants than a homestead exemption or the allowance of an interest expense deduction on a home loan for federal income tax purposes while not allowing a similar deduction for rent expenses. Compare 26 U.S.C.A. § 163, with 26 U.S.C.A. § 262. Moreover, appellees would observe that the property tax burden on residents of leased or rented multi-unit residential property is an indirect one, occasioned by the economic effect of taxation on rental payments or by contractual agreements between landlords and tenants. In this respect the economic effect of property taxes on tenants would appear to differ little from the economic effect on members of the public generally of other taxes paid by commercial or industrial enterprises and which are reflected to some extent in the prices of goods and services as a cost of doing business.

B. **Appellants have failed to show an actual increased tax burden on residents of leased or rented multi-unit residential property as a result of the Tennessee classification.**

While it is recognized that the property tax base is sixty per cent greater (40% v. 25% of value) on residential property containing two or more rental units than on single family residences, there has been no showing that the actual indirect tax burden on residents of leased or rented multi-unit residential property is actually greater than on the owners of single family residences having comparable accommodations and amenities. The cost of land and economies of scale suggest that multi-unit

residential property can offer comparable living accommodations and amenities at lower cost than a like member of single family residences. Thus, the cost of a single unit in a multi-unit apartment building is likely to be less than the cost of a comparable single family dwelling. Evidence to this effect was adduced in a companion case which was consolidated with the instant case on appeal to the Tennessee Supreme Court. See *Snow v. City of Memphis*, 527 S.W.2d 55, 66 (Tenn. 1975).

C. **The Supreme Court of Tennessee was correct in concluding that the areas of discrimination in the classification are minimal and insignificant.**

The Supreme Court of Tennessee in examining the classification found two areas of discrimination. These areas included discrimination "in favor of the real property owner who lives in one-half of a duplex and rents the other half and in favor of the real property owner who rents one or more single family residences." 527 S.W.2d at 66. It was noted, however, by the Tennessee Supreme Court that the economies of the situation militate against persons generally engaging in the business of renting single-family residences.

The areas of discrimination found by the Tennessee Supreme Court are a consequence of drawing a line in an attempt to distinguish properties which are primarily income-producing from those which are not income-producing or are only incidentally income producing. While the line drawn in the Tennessee classification at two or more rental units leaves out the single family rental residence as an income-producing rental unit thereby discriminating in favor of such residences, the line drawn represents a reasonable attempt to establish a permissible classification with a minimum discrimination. As observed by Mr. Justice Douglas speaking for a majority of the Court in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 8 (1974):

> "Every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial, function."

Appellees maintain that the imperfections contained in the classification are minimal and insignificant when viewed in the context of the entire range of the classification and that the Supreme Court of Tennessee correctly made such a determination.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Supreme Court of the State of Tennessee should be affirmed.

Respectfully submitted

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